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New York State Education Department
Attendance Division
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DISCUSSION ON THE COMPULSORY SCHOOL ATTENDANCE LAW

By JAMES D. SULLIVAN

At the convention of the State Probation Commission in the city of Albany, December 31, 1910, with city magistrates and probation officers in attendance.

We are very largely dependent upon courts of justice in our endeavor to enforce attendance laws. In fact, I do not see how we are going to get results at all without the hearty cooperation of the courts. In many quarters of the State the courts, with commendable courage and good judgment, have done much to secure proper respect for this statute. The law has been upon the statute books about fifteen years and though a drastic measure, it has presumably done more for the educational welfare of the State than any other single measure enacted by the Legislature. In the beginning progress under this statute was slow, courts avoided it and even school authorities did not want to meddle with it very much. All this for lack of public sentiment, but public sentiment ripened gradually and favorably and the conviction has already taken deep root in the public mind that every child within the borders of the State has an inherent right to a common school education. With ripened public sentiment and an honest purpose on the part of authorities to do their duty, the law is found to be easily operated.

Under this statute every child between certain ages, physically and mentally competent, is required to be in school during a certain period of the year and the parent or the one in parental relation is required to have such child there. "The one hundred and one" excuses brought into court by the one in parental relation to justify him in keeping his child out of school should never be seriously considered by the court and can not be if the court is to base its decisions upon the statute and facts. If the child is "physically and mentally competent" his place is in school.

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Last year, the school year that closed in July last, there were twenty cities of considerable size in this State where not a single parent had been either fined or sent to jail for violation of the attendance law, though 245 persons were arrested and brought into court on the charge of violating this statute. Let us analyze these figures. Let us admit that some of these cases were not accompanied by sufficient and proper evidence to warrant conviction. Let us further admit that attendance officers charged with the enforcement of law are sometimes lacking in intelligence and judgment and for the lack of such intelligence bring persons into court without sufficient proof to warrant conviction, or, if proof appears to be sufficient, it is brought before the court in such an irregular and unusual manner as not to be available. Another group of these cases was well cared for by the probation system. But I submit, is it not remarkable that in the entire batch of 245 cases in twenty cities, some having a population of 100,000, not a single parent was either fined or sent to jail? It goes without saying, and proof is not lacking of the fact, that the law was not enforced in many of these cities, though hundreds of children who should have been in school were allowed to run the streets. We say to school authorities, "If you do not look after the enforcement of this law the State Commissioner of Education is in duty bound to withhold State aid from your city." School authorities come back at us and say, "We are willing to do our duty but we can not get proper action on the part of the courts."

In a city not a hundred miles from Niagara Falls the Education Department encountered serious difficulty in an endeavor to enforce attendance laws. The city to which I refer had one of the best school boards in the State; the superintendent of schools was an intelligent, conscientious, alert man and the attendance officer was a man of good judgment and force. The president of the board was one of the best lawyers in the State, yet the law in that city was a dead letter. The president of the school board said to me, "We can not enforce the attendance law in this city. When we have done our utmost as a board of education and get the attendance machinery fairly in operation, so far as the board is concerned, we are held up later by the local courts. Our judge will not punish delinquent parents." I said, "Make test cases in your court for the next thirty days. Get before the court on every case in which you have sufficient evidence to warrant conviction and which would secure conviction with a judge willing to do his duty." This is what

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happened: out of 98 cases, and each one a good one, in that evidence was ample to warrant conviction, only two persons were convicted, and two fines imposed, one of one dollar and one of fifty cents.

In a second conference with the president of this school board I remarked, "If you were the State Commissioner of Education what would you do with this city?" He said, "I would withhold public school moneys as the statute provides and I advise that it be done, notwithstanding the fact that I am president of the school board and realize that the board will be seriously hampered when it comes to the paying of our teachers, as we are largely dependent upon State school moneys for the payment of teachers' wages. However, we will borrow the money and it will not be long before the tax-payers of the city will determine who is responsible for the loss of its funds." The Commissioner of Education promptly issued the order withholding school moneys from that city. Newspapers of the city had much to say about the person who was responsible for the loss of such moneys. The court hastened to find shelter under various excuses but the day of grace had been sinned away. Tax-payers and electors "got even" with the court at the next election. In that same city there were 94 people arraigned last year for the violation of the attendance law and 46 were properly fined. The year preceding there were 55 arrested and 25 fined. This shows marked improvement. The present court in that city has established a wholesome respect for this law. Now parents in that city understand that if they rob their children of their rights to attendance at school, proper punishment is pretty certain to follow. How can other courts aid in the enforcement of the attendance law? By doing exactly with delinquent parents what is being done now in the city to which I have referred: so promptly and severely punish them that they will be glad to obey the law.

The persons who usually violate the attendance law may be divided into three classes:

I The class represented by the man who is brought into court charged with keeping his child out of school for work. In this case evidence ample to convict is not lacking, for one of the primary purposes had in mind by the Legislature in the enactment of the law was to prevent parents from keeping children out of school for work at a period of life when they should be getting a common school education. Yet it often develops in the trial that the defendant charged with keeping his child out of school for work is a poor

man with many mouths to feed on a small income; or apparently even more serious, the defendant may be a widow with a large family to be cared for out of her daily wages. When this class of cases is brought into court the court apparently loses sight of the requirements of the statute and the educational rights of the child and immediately, either from largeness of heart or lack of judicial temperament, decides in favor of the parent. Such a decision is rarely in accordance with the facts and the statute. In truth, he reads into the statute what is not there and reads out of it a decision that is not supported by either statute or evidence. I submit, if it is right for these poor parents to keep their unfortunate children out of school and thus rob them of their chances for a common school education, the Legislature should so amend the statute that this big-hearted judge will be able to render a decision in accordance with law and facts. But so long as the statute remains as it now stands the court has absolutely no right to render a decision not supported by both law and evidence. Many of you judges doubtless think it would not only be cruel but the height of folly to impose a fine upon such a parent, a poor man, from the fact that he may have no money with which to pay his fine and you reason that matters would not be helped very much by sending him to jail. All that may be true, but the business of the court in the administration of the law is to keep steadily in mind the rights of the child. The law was made for the child and not for the parent.

A 13-year old boy can often earn a man's wages. The question is often asked, "Are you going to deprive a poor parent of the wage-earning capacity of such a child by forcing him into school and thus making it necessary for both the parent and child to go to the poormaster?" That whole question was thrashed out in the Legislature when the bill embodying the attendance law was pending before that body and it was fully determined by the enactment of the law that every child was entitled to a common school education without regard to the poverty or other unfortunate conditions of the parent. The child is not to blame because his parent is poor. The misfortunes of the parent must not be put upon the child and it is the business of the court to take the law as it stands and enforce its provisions regardless of consequences to either parent or child.

2 Here comes into court class number two. This class presents a more aggravated case than class number one. The parent, when

arraigned and charged with violation of the law, says to the judge, "Yes, my child is out of school and has been but I supposed he was in school." Now, the truth is, this parent represents that large class of shiftless and worthless parents who do not take time or trouble to know where their children are half the time. In fact, they do not care. This sort of parent shirks totally the responsibility that rests upon him in regard to his own child. He is in duty bound to know where his child is from day to day and if he exercises proper interest in the child he would know. Therefore, every time this sort of man is brought into court he should be punished so severely and promptly that he will recognize his parental responsibility.

3 Every day we are committing crimes in this State against children under the Compulsory Education Law by arresting and bringing into court unfortunate children found out of school when the parent is the one who should be arrested and prosecuted. Why is this done? Simply because it is easier to arrest a defenseless child and drag him into court than it is his worthless father. The child has no one to stand for him; the father, though he be a worthless sort of man, has at least a vote and sometimes a sort of political pull. Yet in 99 cases out of 100 the parent is the real criminal. Last year we arrested over 8000 of these unfortunate children in this State. We called them "truant" children but a child is never a truant until he is beyond the absolute control of the parent who is doing his utmost to manage and control the child. The fact is that we have but very few truant children. There is a vast difference between a truant child who is out of school and the child who is out of school with the knowledge and consent of the parent. For every child who may be justly classed as a *truant* you will find a hundred criminally delinquent parents. Then why not arrest the parent instead of the child? Last year we sent to correctional institutions 1200 children but we put only 38 parents in jail. These figures should be reversed. We do not find very many truant children if we see to it that delinquent parents are made by legal process responsible for their own offspring. More and more must we make the penalty of this law run against the parent and less against the child. Over in Germany these penalties under the attendance law invariably run against the parent and very seldom against the child and as a result the parent in Germany seldom violates the law, and if he does he is punished so quickly and severely that he never forgets it.

Following a speech by Judge Brady, Mr Sullivan spoke as follows:

Judge Brady is entirely right when he says that at times the magistrate is confronted with a most difficult situation, especially when the offender is a widow with small income and a large family of children. Yet the law, even in this case, requires children to be in school, although the mother is apparently in need of the wages that the child could earn. The law was enacted almost exclusively in the interests of the children of the poor and had it not been for this very class of children doubtless we never would have needed this drastic measure.

It seems to me in connection with cases of this kind, instead of sending the mother to the poor department and thus pauperizing mother and children, that the judge should be empowered to order that the mother should be paid an amount equivalent to the wage-earning capacity of the child, inasmuch as the child is forced into school. This method of disposing of cases of this character would constitute paternalism, but what valid objection can there be to that so long as it would be the kind of paternalism for which every right-minded person, having the welfare of mother and child at heart, could easily stand?

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